

REMARKS

This amendment is submitted in reply to the final Office Action mailed on September 16, 2005. Claims 1 and 6-21 are pending in this application. Claims 2-5 were previously canceled. In the Office Action, Claims 1 and 16 are rejected under 35 U.S.C. §112, first paragraph, Claims 1 and 6-21 are rejected under 35 U.S.C. §112, second paragraph, and Claims 1 and 6-21 are rejected under 35 U.S.C. §103. In response Claims 1, 6-7 and 16-11 have been amended. These amendments do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1 and 16 are rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Patent Office alleges that the phrase “with the exclusion of emulsifier” in Claim 1 and the phrase “without adding any emulsifier” in Claim 16 is not supported by the original disclosure. In response, Applicants have removed the phrases and amended Claims 1 and 16 to recite, in part, a mixture consisting essentially of particles of baked biscuit and at least one fat. The amendment is fully supported in the specification, for example, at page 2, lines 15-34. Based on at least these noted reasons, Applicants believe that Claims 1 and 16 fully comply with 35 U.S.C. §112, first paragraph.

In the Office Action, Claims 1 and 6-21 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Patent Office alleges that the term “biscuit-like” is indefinite because the meaning and scope of such language cannot be determined. In response, Applicants have amended the relevant claims to clarify the term “biscuit-like” with “biscuit.” The amendment is fully supported in the specification, for example, at page 2, lines 15-19. Moreover, biscuits and their general features are commonly known to one having ordinary skill in the art. Based on at least these noted reasons, Applicants believe that Claims 1 and 6-21 fully comply with 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claims 1 and 6-21 under 35 U.S.C. §112 be withdrawn.

In the Office Action, Claims 1 and 6-21 are rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,508,926 to Werbin et al. ("*Werbin*"). Applicants believe this rejection is improper and respectfully traverse it for at least the reasons set forth below.

Independent Claims 1 and 16 recite, in part, a biscuit-like mass comprising a mixture consisting essentially of particles of baked biscuit and at least one fat. Applicants respectfully submit that *Werbin* teaches away from the present claims and that all of the claimed elements are not taught or suggested by *Werbin*.

Applicants respectfully submit that *Werbin* teaches away from the present claims. For example, *Werbin* teaches egg yolk (e.g. a typical ingredient for baked product) as a possible emulsifier. See, *Werbin*, column 2, lines 54-61. Further, in *Werbin* the emulsifier (i.e. egg yolk) is applied in the form of a melted mixture with the shortening to the baked biscuit in order to coat the particles and the resulting coated particles are subsequently agglomerated with the aid of water "to form a homogeneous product of usable viscosity." See, *Werbin*, column 2, line 62 to column 3, line 4. Although this can result in adding less water to form a product of satisfactory consistency, *Werbin* teaches that some water must be added to its product. By contrast, no water is added to the claimed biscuit mass because, for example, doing so would dramatically increase the viscosity of the mass and disturb processing it as a coating or inclusion. See, specification, page 5, line 31 to page 6, line 2.

Moreover, Example 3 in *Werbin* dealing with the preparation of inclusions for using together with ice cream teaches mixing ice cream cone wafer chips with an emulsifier and fat, adding cane syrup and water, kneading the resulting composition, extrusion-cooking the mixture, cutting the extrudate into pieces and finally drying the pieces to obtain a confectionery product that is used as topping for ice cream. This again teaches away from the processes of the present invention where no water is added. As a result, one having ordinary skill in the art would not be motivated to arrive at the present claims in view of *Werbin*.

Applicants also respectfully submit that *Werbin* fails to disclose or suggest every element of the present claims. For example, *Werbin* is directed to treating particles of food material containing gelatinized starch. See, *Werbin*, column 2, lines 17-23. The food particles are coated with shortening and an emulsifier in melted form and the food particles are agglomerated with a small amount of water, preferably in the form of a sugar syrup. It is quite clear in *Werbin*, at

column 2, lines 47-53, that an emulsifier is required to obtain the desired result. It is also clear that the treated food particles are dispersed in an ice cream mass so that there is no visible biscuit residue.

The present claims are directed to a biscuit mass comprising, in part, of a mixture consisting essentially of baked biscuit particles and at least one fat. *Werbin* fails to disclose or suggest such a biscuit mass or process of making same. Moreover, because the process in *Werbin* teaches using an emulsifier, adding some water and requires a drying step for forming the food particulates to eventually be used as particulate inclusions in an ice cream mass, *Werbin* actually teaches away from the present claims. For example, the claimed biscuit mass consists essentially of baked biscuit particles and at least one fat and thereby excludes an emulsifier. In addition, the present invention does not need a rewetting or subsequent drying step as taught by *Werbin*. The cooked biscuit particulates are simply mixed with the fat in the absence of any emulsifier to produce the biscuit mass, which can be used as a coating, core or inclusion of a frozen confectionery.

For the reasons discussed above, *Werbin* does not teach, suggest, or even disclose the present claims, and thus, fails to render the claimed subject matter obvious for at least these reasons.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 1 and 6-21 be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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